

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	DA 05-1348

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (“SBC”), on behalf of SBC California, submits these reply comments in support of Sprint’s Opposition to the Petition for Declaratory Ruling filed by Mark Boling (“Boling Petition”).

The Boling Petition seeks a declaratory ruling that the provisions of California Civil Code Section 1770(a) (22) of the California Legal Remedies Act (“CLRA”) relating to disseminating an unsolicited prerecorded message by telephone with respect to **interstate calling** are not preempted by the Federal Telephone Communication Protection Act (“TCPA”).¹ The Boling Petition contends that there is no conflict between the California Civil Code and the TCPA because the California Civil Code relates to the dissemination or reception of an unsolicited prerecorded message whereas the TCPA relates to the initiation of an unlawful call.² The petition goes on to state that “**No conflict exists** in the enforcement of the TCPA or the CLRA as it relates to the activities set forth in this section, as the action conduct in **each law is separately defined**.”³

However, as Sprint correctly responds, the regulation of interstate telemarketing is governed exclusively by federal law.⁴ While Section 227 (e) permits the states to impose more

¹ Boling Petition for Declaratory Ruling, August 4, 2003, at 1. (emphasis in original).

² *Id.* at 5.

³ *Id.* at 6 (emphasis in original).

⁴ Sprint Reply Comments at 4-19.

restrictive requirements on sending prerecorded messages, it specifically relates that authority to **intrastate** requirements.⁵ California, thus, has no authority to adopt more restrictive telemarketing requirements that apply to interstate services. This is consistent with the dual system of telephone regulation that has existed since adoption of the Communications Act of 1934. Sections 152(a) and (b) of Title 47 provide for federal regulation of interstate communications and state regulation of intrastate communication.⁶ SBC agrees with Sprint that allowing states to regulate interstate telemarketing calls would be contrary to this long-standing division of regulatory powers.

In addition, as Sprint points out, contrary to assertions in the Boling petition, there is a conflict between the CLRA and TCPA with respect to the use of unsolicited prerecorded messages.⁷ The CLRA prohibits certain types of interstate activity fully permitted under the TCPA. For example, federal law allows unsolicited prerecorded messages for non-commercial purposes, while the CLRA does not provide this exception.⁸ Therefore, preemption is required under the conflicts preemption doctrine.

In conclusion, SBC opposes the Boling Petition. SBC respectfully requests that the Commission deny the Petition and declare as Sprint requests that the states have no jurisdiction over interstate telemarketing calls.

⁵ 47 USC § 227(e) (emphasis is added).

⁶ 47 USC § 152(a)&(b).

⁷ Sprint Reply Comments at 19-21.

⁸ 47 CFR § 64.1200(a)(2); California Civil Code § 1770(a)(22) (West 2005).

Respectfully submitted,

SBC Communications Inc.

/s/ Davida M. Grant

Davida M. Grant

Gary L. Phillips

Paul K. Mancini

SBC Communications

1401 I Street, NW

Suite 400

Washington, DC 20005

(202) 326-8903- telephone

(202) 408-8745 - fax

Its Attorneys

August 4, 2005